UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

May 11, 2004 at 9:00 a.m.

THE CALENDAR IS DIVIDED INTO THREE PARTS. THE COURT WILL FIRST HEAR CONTESTED MOTIONS AND OBJECTIONS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULES 3007-1(d)(1) OR 9014-1(f)(1). THESE MATTERS, CALENDAR ITEMS 1-31, WILL BE CALLED FOR HEARING BEGINNING AT 9:00 A.M. EACH OF THESE MATTERS HAS A TENTATIVE RULING.

THE NEXT PORTION OF THE CALENDAR, ITEMS 32-39, ARE MOTIONS AND OBJECTIONS NOTICED FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULES 3007-1(d)(2) OR 9014-1(f)(2). THESE ITEMS WILL BE CALLED BY THE COURT BEGINNING NO EARLIER THAN 10:30 A.M. EACH MATTER IN THIS SECOND CALENDAR GROUP IS SET FOR A PRELIMINARY LAW AND MOTION HEARING. IF NO ONE APPEARS TO CONTEST ONE OF THESE MATTERS, THE COURT MAY DISPOSE OF IT. IF THERE IS OPPOSITION, THE COURT WILL SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE RECORD FURTHER. IF THE COURT SETS A FINAL HEARING IN MATTERS 32 THROUGH 39, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE WHICH IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 15, 2004 AT 9:00 A.M. OPPOSITION TO THE MATTER ON CALENDAR MUST BE FILED AND SERVED BY MAY 25, 2004 AND ANY REPLY MUST BE FILED AND SERVED ON JUNE 1, 2004. THE MOVING PARTY IS TO GIVE NOTICE OF THE CONTINUED HEARING AND THESE DEADLINES.

THE LAST PORTION OF THE CALENDAR, ITEMS 40-107, WILL NOT BE HEARD BY THE COURT. BELOW IS A FINAL RULING FOR EACH OF THE THESE MATTERS. THE "FINAL RULING" WILL BE APPENDED TO THE MINUTES. THE FINAL RULING MAY NOT BE A FINAL ADJUDICATION OF THE MERITS OF A MATTER. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MAY SO ADVISE THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED IN FAVOR OF THE CONTINUANCE OR THE STIPULATION. IF YOU CANNOT SO ADVISE THE COURTROOM DEPUTY CLERK AT THE HEARING, MAKE PROVISION FOR VACATING THE FINAL RULING IN YOUR ORDER.

WITHIN EACH PORTION OF THE CALENDAR, CASES ARE ARRANGED BY THE LAST TWO DIGITS IN THEIR CASE NUMBERS. <u>THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN THREE DIFFERENT LOCATIONS ON THIS CALENDAR.</u>

IF THE COURT CONCLUDES THAT FED.R.BANKR.P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, ABSENT GOOD CAUSE, IT WILL BE SET FOR HEARING ON MAY 18, 2004 BEGINNING AT 1:30 P.M. BEFORE JUDGE McMANUS.

THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER.

Matters called beginning at 9:00 a.m.

1. 04-23103-A-13L EDWARD/CAROLYN GOFF — CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
DB #2 — 4-13-04 [20]
DONALD CRIBBINS, VS.

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The movant is secured by a deed of trust encumbering the debtor's residence. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

This movant made his loan to the debtor in 1995. The loan came due in 12 months. The debtor failed to make the 12 monthly interest payments and he failed to make the balloon payment due on November 30, 1995. Instead, the debtor filed his first chapter 13 petition on September 1, 1995. This personal reorganization was unsuccessful and on September 16, 1996 the debtor filed a chapter 7 petition. This was followed by a second unsuccessful chapter 13 petition on November 26, 2003. In that case, the debtor promised to pay the movant by April 6, 2004. Instead, the debtor failed to file an amended plan as ordered by the court resulting in the dismissal of the case on March 23, 2004.

This case was filed three days later on March 26, 2004. Now the debtor promises to pay the movant within 6 months. Pending a sale, the debtor will make no contractual payments to the movant and will pay just $770 to the trustee. After trustee's compensation, this will leave $700 to service approximately $350,000 in secured debt pending a sale. This will not pay the accruing interest.

Given the failure of the debtor to successfully reorganize in two prior cases, given the failure to make any contract payments to the movant both in and out of chapter 13, given the negative amortization proposed in this case, and given that the debtor has had ample time to sell or refinance the subject property, the court concludes that the debtor is not serious about selling the property and paying the movant. The debtor is filing petitions for the sole purpose of acquiring the automatic stay without any intention or ability to reorganize.

The creditor asserts that this petition and the proposed plan have been filed in bad faith. It is incumbent on the debtor to show that he is proceeding in good faith. 11 U.S.C. § 1325(a)(3). While the creditor has made the assertion, the debtor has the burden of coming forward with evidence to show he has acted in good faith. 11 U.S.C. § 362(g)(2); Fed. R. Bankr. P. 3015(f).

Given the assertion of bad faith and the multiple petitions, the debtor must show that the debtor's financial circumstances have changed such that the court can conclude that this petition is likely to be more successful than the last. In re Metz, 820 F.2d 1495, 1497 (9th Cir. 1987). The debtor has produced no such convincing evidence. If the debtor is to be believed, he is honest in his desire to reorganize this time but was not so motivated in the past. This is hardly a recommendation for the debtor's bona fides.

The court also concludes that the proposed plan will not be feasible and that this case and plan have been filed in bad faith. See 11 U.S.C. § 1325(a)(6). There is cause to terminate the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

2. 04-22608-A-13L JOHN CROUSE — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 4-20-04 [15]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The petition will be dismissed.

The court granted the debtor permission to pay the filing fee in installments. The installment in the amount of $48 due on April 15, 2004 was not paid.

Further, a review of the court's file indicates that the debtor has failed to file a proposed chapter 13 plan within the time required by Fed.R.Bankr.P. 3015(b) and schedules and a statement of financial affairs within the time required by Fed.R.Bankr.P. 1007(c).

Finally, the debtor failed to appear at the first meeting of creditors as ordered by the court.

The failure of the debtor to pay the filing fee as ordered, to appear at the first meeting as ordered, and to file documents as required by the rules indicates that the debtor has willfully failed to appear before the court in the proper prosecution of the debtor's bankruptcy case. Accordingly, the dismissal of the case is pursuant to section 109(g)(1) of the Bankruptcy Code.

3. 03-23524-A-13L WILLIAM/SANDRA GIRARD
JMO #1
YOLO FEDERAL CREDIT UNION, VS. — CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-7-04 [58]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The contract with the movant and the plan require the debtor to insure the vehicle. The insurance must include comprehensive and collision coverages with deductibles of no more than $500. The failure to have this insurance and to provide evidence of it is cause to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The movant's interest in its collateral is not being adequately protected by the debtor.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. §

506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

4. 03-27229-A-13L WESLEY/RANETTE LANE — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF #1 — 4-8-04 [52]
TRANSOUTH FINANCIAL CORPORATION, VS.

☒ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The plan provides for payment in full of the movant's secured claim as a Class 2 secured claim. Class 2 secured claims are paid in full through the plan and without maintenance of post-petition contract installments. The debtor has failed to make $2,800 in plan payments to the trustee. This is a material breach of the plan that has delayed payment of the movant's claim while the debtor continues to use and depreciate the movant's collateral. This cause to terminate the automatic stay.

The contract with the movant and the plan require the debtor to insure the vehicle. The insurance must include comprehensive and collision coverages with deductibles of no more than $500. The failure to have this insurance and to provide evidence of it is also cause to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The movant's interest in its collateral is not being adequately protected by the debtor.

While opposition was filed, it is supported by no admissible evidence. Even if the hearsay is overlooked, the opposition says nothing more than the plan default and the lack of insurance will be rectified by the date of the hearing. This is no more than wishful thinking and it does not explain why the default was allowed to occur nor does it prove that the problem causing the default has been eliminated.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

5. 03-23831-A-13L MELODIE JUDISH — HEARING - MOTION TO APPROVE FIRST MODIFIED PLAN
MCV #1 — 4-5-04 [23]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

The plan requires the debtor to make a lump sum payment in the last month of the plan. There is no evidence with the motion explaining how the debtor will be able to make this payment. The debtor has not carried the burden of proving

the proposed plan's feasibility. See 11 U.S.C. § 1325(a)(6); Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001) (the debtor has the burden of proof of all essential elements of plan confirmation).

6. 01-26132-A-13L RENATO/JOSEPHINE JUGO — HEARING - MOTION TO APPROVE SALE OF PROPERTY
JMO #1 — 4-27-04 [59]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied because it was set for hearing on 14 days even though 20 days' notice is required. Fed.R.Bankr.P. 2002(a)(2) requires a minimum of 20 days' notice of the hearings on motions to the sale of estate property. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that 14 days' notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(b)(6) requires a minimum of 20 days of notice of the hearing and because of 14 days' was given, notice is insufficient.

7. 02-29940-A-13L NANETTE DUVALLE-JONES — CONT. HEARING - MOTION TO AVOID JUDICIAL LIEN
MET #1
VS. GREAT WESTERN COLLECTION BUREAU — 1-29-04 [47]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $245,000 as of the date of the petition. The unavoidable liens total $181,000. The debtor has an available exemption of $52,500. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there remains $11,500 in equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and only to the extent the lien secures more than $11,500.

8. 03-29640-A-13L SAMUEL/LINDA ARNOLD — HEARING - MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN
DRB #1 — 4-1-04 [49]

☒ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The objection that the plan must provide interest on the pre-petition arrearage will be overruled. This loan was made in 2000. Prior to the incurring of this debt, the Bankruptcy Code was amended to include 11 U.S.C. § 1322(e). Section 1322(e) overrules Rake v. Wade which had required the payment of interest on interest arrears. The loan in question was made after the effective date of section 1322(e). Therefore, the creditor's loan documentation must require

interest to be paid on arrears if it is to receive interest on arrears. There is no evidence that such is the case and the documentation attached to the proof of claim includes no such provision. Therefore, the debtor is not required to pay interest on arrears.

However, the court concludes that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). The debtor has been unable to pay, through the trustee, three monthly post-petition installments. After the filing of the petition, in breach of the contract with the objecting creditor and the plan, the debtor has failed to pay insurance premiums and post-petition taxes.

9. 03-26941-A-13L SHEILA TAYLOR
JSO #3

HEARING - MOTION TO CONFIRM SECOND AMENDED CHAPTER 13 PLAN
3-29-04 [36]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

Taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 67 months to complete the plan.

10. 03-32943-A-13L ANDREW BANO
AGT #1

CONT. HEARING - MOTION TO APPROVE SALE OF REAL PROPERTY (4218 VEGA LOOP, SHINGLE SPRINGS, CA)
3-22-04 [53] O.S.T.

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: Because the debtor does not qualify for chapter 13 relief, the motion will be denied.

The debtor has no disposable and regular income with which to fund a plan. This is obvious from the proposed plan which is based entirely on the sale of property. No plan payments will come from the debtor's income. Absent disposable income, the debtor is not eligible for chapter 13 relief. See 11 U.S.C. § 109(e).

If a debtor's income is not sufficient by itself to pay claims in full, there is nothing in 11 U.S.C. § 109(e) that requires a debtor to pay claims only from future disposable income. The plan may also propose to sell property or refinance it in order to pay claims. This is specifically permitted by 11 U.S.C. § 1322(b)(8). See e.g., In re Hogue, 78 B.R. 867 (Bankr. S.D. Ohio 1987). However, in this case, none of the plan payments will come from income. They will all come from the sale of property. See In re Gavia, 24 B.R. 573, 575 (B.A.P. 9th Cir. 1982) ("[W]e construe [section 1322(b)(8)] as permitting a plan to supplement payments from future income.").

Also, there are serious questions regarding the debtor's involvement with the trust and trustee on title to the property. This creates an issue as to the debtor's interest in the property and the willingness of the debtor to abide by

a plan and pay creditors.

11. 03-29547-A-13L DAVID/CLAIRE ATTEBERRY — HEARING - MOTION TO CONFIRM DEBTORS' AMENDED CHAPTER 13 PLAN 4-2-04 [59]
LJP #3

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 105 months to complete the plan.

Second, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling $1,700. The plan does not comply with 11 U.S.C. § 1325(a)(6).

12. 04-20249-A-13L NORMA/JOHN CRANSHAW — CONT. HEARING - OBJECTION TO CONFIRMATION OF PLAN BY OCWEN FEDERAL BANK 2-27-04 [13]
DRW #1

☒ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: To the extent the objection to the original plan is relevant to the first amended plan, the court has addressed the objection in its ruling on the debtor's motion to confirm the first amended plan (DCN FF-1).

13. 04-20249-A-13L NORMA/JOHN CRANSHAW — HEARING - MOTION TO CONFIRM DEBTORS' FIRST AMENDED PLAN 3-23-04 [18]
FF #1

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection [filed separately as DCN DRW-1] will be sustained.

The objection that the plan is proposed in bad faith because the debtor filed a prior chapter 7 petition will be overruled. Matter of Metz, 820 F.2d 1495 (9th Cir. 1987), supports the position that a debtor may file a Chapter 13 after receiving a Chapter 7 discharge even before the Chapter 7 case is closed. In Metz, the Ninth Circuit held that successive filings do not constitute bad faith per se, and that the filings must be examined together and the result achieved by such filings and reviewed against the statutory requirements of the Bankruptcy Code. Accord In re Baker, 736 F.2d 481, 482 (8th Cir. 1984); In re Gayton, 61 B.R. 612, 614 (BAP 9th Cir. 1986). It is permissible for a debtor to file chapter 7 to shed dischargeable debts and then file a chapter 13 petition to reorganize secured debt and/or debts nondischargeable in the chapter 7.

The objection that the plan does not provide for the objecting creditor's secured claim will be overruled. The claim for arrears is provided for in Class 1. That is, the plan provides for payment in full of the secured claim. At least facially, this satisfies 11 U.S.C. § 1325(a)(5)(B).

The court rejects the objection that a chapter 13 plan may not rely upon proceeds from the sale or refinance of real property. If a debtor's income is not sufficient by itself to pay claims in full, there is nothing in 11 U.S.C. § 109(e) that requires a debtor to pay claims only from future disposable income. The plan may also propose to sell property or refinance it in order to pay claims. See e.g., In re Hogue, 78 B.R. 867 (Bankr. S.D. Ohio 1987). Indeed, this is specifically permitted by 11 U.S.C. § 1322(b)(8). See also In re Gavia, 24 B.R. 573, 575 (B.A.P. 9th Cir. 1982) ("[W]e construe [section 1322(b)(8)] as permitting a plan to supplement payments from future income.").

The stream of payments from the debtor plus the proceeds from the sale of the debtor's residence will be sufficient to pay claims in full. In this sense, the plan is both feasible and complies with 11 U.S.C. § 1325(a)(5)(B).

However, the sale is not scheduled to occur for 57 months. In the interim, the plan payment, after deducting the trustee's compensation and the amount of the ongoing mortgage payment to the Class 1 creditor, will be approximately $500 a month. This will be paid to the holders of approximately $100,000 in secured Class 1 and Class 2 secured claims. All of these claims accrue interest, approximately $64,000 at 9.5% and $37,000 at 10%. This interest burden will be approximately $800 a month. Thus, the plan negatively amortizes the secured claims pending the sale in the 57th month of the plan.

There are two problems with this. First, there is no convincing evidence that the debtor is able to sell the property and that any sale will produce the necessary balloon payment. In other words, the debtor has not carried the burden of proving that the plan is feasible. See 11 U.S.C. § 1325(a)(6).

Second, while the plan states that the debtor will pay the present value of the objecting creditor's claim, the plan will negatively amortize the claim over a very long period of time with the promise that the accrued interest and the incredibly large pre-petition arrearage of over $63,000 being paid at the end of the plan if and when the debtor is able to sell the property.

While negative amortization is not per se impermissible, the fairness of a plan including it must be determined on a case-by-case basis. See e.g., Great Western Bank v. Sierra Wood Group, 953 F.2d 1174 (9th Cir. 1992). The debtor has not given the court any factual basis for concluding that there is no jeopardy to the secured creditor if its claim is allowed to accrue interest until the end of the plan.

These facts require the court to conclude that the proposed plan does not, in substance, comply with 11 U.S.C. § 1325(a)(5)(B)(i). Absent the consent of the secured creditor, a chapter 13 plan modifying a secured claim cannot be confirmed unless it will pay the present value of the secured claim as well as permit the creditor to retain the lien securing the claim. A plan effectively denies a secured creditor its lien if it does not provide an income stream that keeps pace with the depreciation of its collateral and the accrual of interest. Accord In re Cook, 205 B.R. 437, 442-43 (Bankr. N.D. Fla. 1997) (confirmation denied when plan would pay debtor's attorney's fees in advance of car lender because depreciation would exceed payments to the secured creditor in the early months of the case).

Other courts, most notably In re Johnson, 63 B.R. 550 (Bankr. D. Colo. 1986) and In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995), have held that the power to modify a secured claim under 11 U.S.C. § 1322(b)(2) is limited by the adequate protection requirement of 11 U.S.C. § 361. Notions of adequate protection require that a creditor be protected from the depreciation and diminution of its collateral. United Sav. Ass'n. Of Tex. V. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365 (1988).

Whether the requirement is phrased as one of lien retention or of adequate protection, the debtor has not demonstrated that his proposed plan deals fairly with the objecting creditor's claim. The plan dividend to be paid to the objecting creditor will not keep pace with the interest accrual on its claim and it not do so for nearly five years. While the plan is performed, the arrearage claim will not be reduced unless the debtor happens to get lucky and sell the property. The plan proposes to "back end" this claim and the court will not approve it.

14. 01-24051-A-13L JOSE/SILVIA MARTINEZ — CONT. HEARING - MOTION TO APPROVE INCURRING OF DEBT
JMO #5 — 4-14-04 [40]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion to borrow money and to secure the loan with the debtor's real property will be granted on the condition that the loan proceeds are used to pay all liens of record in full, whether or not the lien holder has filed a proof of claim, and in a manner consistent with the plan. The trustee shall approve the form of the order.

Absent either payment in full (i.e., a 100% dividend) of all filed proofs of claim, the expiration of the term of the confirmed plan, or the approval of a modified plan that permits the plan to be completed without payment in full, the plan shall not be deemed completed by payment of the loan proceeds to the trustee. This is because the debtor's plan requires that the debtor pay a monthly payment for the stated term even if the dividend promised to general unsecured creditors is exceeded. Until the plan term has run its length, or until the unsecured creditors get 100% of their claims, or unless a modified plan shortening the term is approved, the debtor must make plan payments for each month of the entire term whether the unsecured creditors get the minimum dividend promised in the plan or something more.

15. 98-38652-A-13L JOSEPH/PAMELA IRVIN — CONT. HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
SDB #2 — 9-24-03 [95]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

First, the proposed plan states that $49,015 has been paid into the plan to date by the debtor. The amount actually paid was $41,015. With the lesser amount, the plan is not feasible. It will not pay the promised dividends over the proposed term of the plan.

Second, the plan does not provide for payment in full of the priority claim of the IRS as required by 11 U.S.C. § 1322(a)(2).

16. 98-38652-A-13L JOSEPH/PAMELA IRVIN — CONT. HEARING - OBJECTION TO CLAIM NO. 10 OF WASHINGTON MUTUAL 9-12-03 [88]
SDB #3

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The objection will be dismissed. First, the evidence of the pre-petition payments is not legible. Second, the proof of claim makes no reference to forced placed insurance. Yet, the debtor wants over $5,000 of the claim allowed as reimbursement for forced placed insurance. The court has no idea why. Further the accounting provided by the claimant shows that the debtor ran a negative balance in the escrow account from 1997 through October 2001. The debtor has provided no contrary evidence showing that the debtor paid all taxes and insurance.

17. 03-20755-A-13L GENE/CLAVISS NUGENT — HEARING - REQUEST TO RE-CALENDAR MOTION FOR RELIEF FROM AUTOMATIC STAY; TO MODIFY ORDER 3-29-04 [32]
SRW #1

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The court previously modified the automatic stay to permit the movant to liquidate two specific pending state court actions and to pursue to judgment a claim for an assault and battery alleged to have occurred after the filing of the petition. This motion seeks leave to file a malicious prosecution/libel/infliction of emotional distress action arising out of the debtor's filing of a motion to have the movant declared to be a vexatious litigant. The filing of the motion occurred after the filing of the petition. The movant maintains that the statements in the motion, which was not granted, were false and malicious and caused emotional distress.

The motion will be denied.

First, leave of this court is not necessary to establish the debtor's liability for claims arising after the filing of the petition. See 11 U.S.C. § 362(a)(1) & (6).

The automatic stay precludes only the enforcement of such a post-petition claim against property of the bankruptcy estate. See 11 U.S.C. § 362(a)(3), (4), (5). To that, relief from the automatic stay is necessary. It is premature to modify the stay for this purpose since the movant has not even obtained a judgment.

Second, Cal. Civil Code § 47(b) provides that publications or broadcasts made in a judicial proceeding are privileged. While this court is not determining that section 47(b) is applicable, for purposes of the automatic stay, the court will require more than a showing that the debtor filed a motion in state court containing libelous statements before it terminates the stay.

18. 03-21557-A-13L BRIAN/JACQUELINE GRACE
MWB #5

HEARING - MOTION FOR ORDER DISALLOWING CLAIM AND DEMAND FOR TURNOVER OF FUNDS 3-29-04 [88]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Under the terms of the previously confirmed plan, the debtor provided for the cure of the pre-petition arrearage on First Nationwide's long-term secured claim through the plan.

After the plan was confirmed, the debtor sold his home. Under the plan, the unmatured principal should have been paid to First Nationwide directly by the escrow holder. However, the balance of the pre-petition arrears should have been paid to First Nationwide by the trustee. Consequently, the trustee should have submitted an escrow demand that included the remaining arrearage claim and the escrow holder should have paid over to the trustee the amount necessary to cure that arrearage.

The trustee apparently submitted such a demand. The escrow holder paid the demand but it also paid the remaining pre-petition arrearage claim directly to First Nationwide. As a result, it appears that First Nationwide arrearage claim was paid twice.

This means that the debtor made a mistake. The debtor apparently approved escrow instructions that permitted the escrow holder to pay the remaining arrearage twice, once directly to First Nationwide and once indirectly through the trustee.

To remedy this situation, the debtor has filed an objection to First Nationwide's claim. This, of course, makes no sense whatever. If its claim is disallowed, it could be compelled, assuming a properly filed and served adversary proceeding, to refund everything it was paid. Disallowed claims are entitled to nothing.

The problem is not with the proof of claim. It is with the debtor who signed escrow instructions that permitted a double payment. If the debtor wants to recover the double payment he must file the appropriate adversary proceeding against First Nationwide to recover the funds. This cannot be done in a contested matter as here attempted by the debtor. See Fed.R.Bankr.P. 7001.

19. 03-21557-A-13L BRIAN/JACQUELINE GRACE
MWB #6

HEARING - MOTION FOR ORDER DISALLOWING CLAIM AND DEMAND FOR TURNOVER OF FUNDS 3-29-04 [85]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Under the terms of the previously confirmed plan, the debtor provided for the cure of the pre-petition arrearage on Beneficial's long-term secured claim through the plan.

After the plan was confirmed, the debtor sold his home. Under the plan, the unmatured principal should have been paid to Beneficial directly by the escrow holder. However, the balance of the pre-petition arrears should have been paid to Beneficial by the trustee. Consequently, the trustee should have submitted an escrow demand that included the remaining arrearage claim and the escrow holder should have paid over to the trustee the amount necessary to cure that arrearage.

The trustee apparently submitted such a demand. The escrow holder paid the demand but it also paid the remaining pre-petition arrearage claim directly to Beneficial. As a result, it appears that Beneficial arrearage claim was paid twice.

This means that the debtor made a mistake. The debtor apparently approved escrow instructions that permitted the escrow holder to pay the remaining arrearage twice, once directly to Beneficial and once indirectly through the trustee.

To remedy this situation, the debtor has filed an objection to Beneficial's claim. This, of course, makes no sense whatever. If its claim is disallowed, it could be compelled, assuming a properly filed and served adversary proceeding, to refund everything it was paid. Disallowed claims are entitled to nothing.

The problem is not with the proof of claim. It is with the debtor who signed escrow instructions that permitted a double payment. If the debtor wants to recover the double payment he must file the appropriate adversary proceeding against Beneficial to recover the funds. This cannot be done in a contested matter as here attempted by the debtor. See Fed.R.Bankr.P. 7001.

20. 04-21263-A-13L KISHORE SARUP — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
SPS #1
VINDER RAY, ET AL., VS. — 4-2-04 [25]

☒ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the creditor to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

This is the fourth chapter 13 petition filed by the debtor in quick succession over a period of approximately four years.

The first, Case No. 00-26053, was filed on May 23, 2000 and was dismissed at the request of the trustee on September 12, 2000. It was dismissed because the debtor failed to make timely plan payments.

The second, Case No. 00-31410, was filed on October 13, 2000 before the first case was even dismissed. On April 9, 2003 the second petition was dismissed on the motion of the chapter 13 trustee because the debtor had failed to make plan payments.

The third case, Case No. 03-31265, was filed on October 15, 2003. The trustee moved to dismiss the case. The motion was based on the failure of the debtor to make plan payments in excess of $6,000. The case was dismissed on February 3, 2004.

This latest case was filed on February 10, 2004

During this progression of cases, the creditor's pre-petition arrearage, as reflected in its proofs of claim in each case, has increased from $0 to over $33,000 (or, if the debtor is to be believed, to $21,000). Further, the creditor's claim matures on December 1, 2004. Therefore, any plan may not just cure the arrearage; the entire claim must be paid during the case.

The court concludes that the debtor is filing successive petitions without the intention or ability to perform a plan.

The debtor has an established track record of failure in this court. While the parties are given to hyperbole seem intent on slinging mud at one another, the bottom line for the court is that the debtor very recently filed a chapter 13 case and it failed. He was unable to make timely plan payments because of a slowing of business in December 2003.

There is nothing in the debtor's opposition that convinces the court that the exact same result will not occur in this case. And, while it is true that the nature of the debtor's business problems have been many (tax problems, a fire, the default to the creditor) and have changed in nature over the last several years, the fact remains that he has been in constant financial distress and every prior attempt to reorganize has failed. There comes a time when it is abundantly clear that it is not in the cards and the debtor has come to that point.

The creditor asserts that this petition and the proposed plan have been filed in bad faith. It is incumbent on the debtor to show that he is proceeding in good faith. See 11 U.S.C. § 1325(a)(3). The creditor also maintains that no plan is in prospect. See 11 U.S.C. § 1325(a)(6). While the creditor has made the assertion, the debtor has the burden of proving that he has acted in good faith and that the plan, unlike his prior plans, is feasible. See 11 U.S.C. § 362(g)(2); Fed. R. Bankr. P. 3015(f). The debtor has not convinced the court.

There is ample cause to terminate the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This relief is effective for a period of 180-days.

21. 04-21263-A-13L KISHORE SARUP
SPS #2

HEARING - OBJECTIONS TO CONFIRMATION OF PLAN BY VINDER RAY & FRANCES HAMMOND
4-2-04 [22]

☒ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: For the same reasons the court has terminated the automatic stay (DCN SPS-1), the court denies confirmation. The plan does not comply with

11 U.S.C. § 1325(a)(3) and (6).

22. 04-21263-A-13L KISHORE SARUP
SPS #3

HEARING - MOTION TO DISMISS CASE AND REQUEST FOR SANCTIONS
4-2-04 [16]

☒ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The assertion that the filing of this petition violated 11 U.S.C. § 109(g) is wrong. The order dismissing the prior case made no finding or conclusion that the dismissal was because the debtor had willfully disobeyed a court order. Therefore, section 109(g)(1) is not applicable. Further, the dismissal was not a voluntary dismissal. Therefore, section 109(g)(2) is not applicable.

The request for sanctions against the debtor's attorney will be denied. The motion is based on 28 U.S.C. § 1927. Section 1927 permits a "court of the United States" to shift fees and costs to an opponent's attorney if that attorney has unreasonable and vexatiously multiplied litigation.

As an Article 1 court, the bankruptcy court is not considered a court of the United States within the meaning of section 1927. Accord In re Deville, 280 B.R. 243, (B.A.P. 9th Cir. 2002); Perroton v. Gray (In re Perroton), 958 F.2d 889, 896 (9th Cir. 1992); Determan v. Sandoval (In re Sandoval), 186 B.R. 490, 495- 96 (B.A.P. 9th Cir. 1995). Therefore, the request for sanctions will be denied.

However, the petition will be dismissed for the same reasons given for terminating the automatic stay (DCN SPS-1). See 11 U.S.C. § 1307(c)(1).

23. 04-22675-A-13L RONALD/VIVIAN KUYKENDALL

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
4-20-04 [12]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The petition will be dismissed.

The court granted the debtor permission to pay the filing fee in installments. The installment in the amount of $43 due on April 16, 2004 was not paid.

Further, a review of the court's file indicates that the debtor has failed to file a proposed chapter 13 plan within the time required by Fed.R.Bankr.P. 3015(b) and schedules and a statement of financial affairs within the time required by Fed.R.Bankr.P. 1007(c).

Finally, the debtor failed to appear at the first meeting of creditors as ordered by the court.

The failure of the debtor to pay the filing fee as ordered, to appear at the first meeting as ordered, and to file documents as required by the rules indicates that the debtor has willfully failed to appear before the court in

the proper prosecution of the debtor's bankruptcy case. Accordingly, the dismissal of the case is pursuant to section 109(g)(1) of the Bankruptcy Code.

24. 02-33576-A-13L RHONDA JOHNSON — HEARING - TRUSTEE'S NOTICE OF DEFAULT AND APPLICATION TO DISMISS 3-10-04 [18]
LJL #1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The petition will be dismissed.

On March 10, 2004, the trustee filed a Notice of Default and Application to Dismiss reciting that the debtor had failed to pay $3,704.77 in plan payments. This notice was served on the debtor and the debtor's attorney on March 10.

This notice of default is authorized by General Order 01-02, ¶ 7, which provides: "*If the debtor fails to make any plan payment pursuant to a confirmed plan, including direct payments to creditors, the Trustee may mail to the debtor and the debtor's attorney written notice of the default. If the debtor believes that there is no such default, the debtor shall set a hearing within 30 days of the mailing of the notice with 14 days notice to the Trustee. If the court concludes that there has been a default, the case will be dismissed. Alternatively, debtors may acknowledge that payments have not been made and, within 30 days of the mailing of the notice, either cure the default by payment or by filing a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has changed, amended Schedules I and J shall be filed with the motion to modify. Debtors shall have 30 days from the filing of the motion and proposed modified plan to obtain court approval of the modified plan. If the debtor fails to timely set a hearing on the Trustee's notice, or cure the default by payment, or file a proposed modified plan and motion, or perform the modified plan pending its approval, or obtain approval of the modified plan, the case will be dismissed without a hearing on the Trustee's application.*"

This provision is applicable to all chapter 13 cases. General Order 01-02, ¶ 1(a) provides: "*This order relates to chapter 13 cases filed in or transferred to the Eastern District of California and supersedes any previous orders in conflict with its provisions. This order applies to chapter 13 cases filed on or after March 1, 2001. Paragraphs 7, 8, 9, and 10, however, apply to all pending cases.*"

There are, then, three alternatives. (1) Cure the default within 30 days of the notice of default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. Once filed, the debtor has an additional 30 days to obtain confirmation of the modified plan. (3) Contest the notice of default by setting a hearing within 30 days of the notice of default on 14 days of notice to the trustee.

The debtor has exercised no of these options. Absent some mitigating factor suggesting that the debtor should be given more time to cure the default, contest the default, or modify the plan, the case will be dismissed.

25. 03-32484-A-13L CHERYL MCKINZIE
CJY #2

HEARING - MOTION FOR CONFIRMATION OF FIRST AMENDED CHAPTER 13 PLAN
3-24-04 [43]

☒ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The plan does not propose to pay all unsecured claims in full. Therefore, all of the debtor's income not necessary to her and her family's maintenance and support must be contributed to the plan. See 11 U.S.C. § 1325(b).

The debtor is not contributing all disposable income to the plan. The debtor is deducting the purchase of $100 of savings bonds from her paycheck. Further, the debtor is over-withholding resulting in a tax refund of approximately $1,500 per year or $125 a month. It also appears that the debtor's income has increased by approximately $100 a month since the petition was filed.

Also, the debtor admitted at the first meeting that she expects to receive a settlement of a claim arising out of an auto accident and that a portion of the claim is not exempt. The plan, however, does not include an amount equivalent to the nonexempt portion of the claim. This is required by 11 U.S.C. § 1325(a)(4).

26. 02-30087-A-13L MARY MOULTRIE
MAM #4

HEARING - MOTION TO CONFIRM AMENDED CHAPTER 13 POST-CONFIRMATION
3-22-04 [55]

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

There is no evidence with the objection explaining why the debtor defaulted under the confirmed plan, demonstrating that the problem(s) have been rectified, and proving that the debtor now has the ability to make an even larger plan payment. The debtor has not carried the burden of proving the proposed plan's feasibility. See 11 U.S.C. § 1325(a)(6); Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001) (the debtor has the burden of proof of all essential elements of plan confirmation).

The court notes that the trustee was not served at his correct mailing address, P.O. Box 1858. Nonetheless, the trustee has responded to the motion and has not raised the defective service. It is waived.

27. 03-31293-A-13L DON GILBERT
WSS #1

HEARING - OBJECTION TO CLAIM OF IRONGATE APARTMENTS
3-24-04 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled and the court abstains so that the debtor's liability to the creditor can be determined in the pending state court litigation.

The proof of claim is prima facie evidence of the validity of the claim and its amount. Fed.R.Bankr.P. 3001(f). The objecting party has the burden to "produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." In re Consolidated Pioneer Mortgage, 178 B.R. 222, 225 (B.A.P. 9th Cir. 1995). The debtor has produced no evidence to support any of the assertions in the objection.

While superficially it appears the claim of Irongate and Marchbrook are similar, the most that can be said is that they are based on the same transaction. That is, Marchbrook contracted with the debtor or an entity owned by the debtor to provide electrical contracting services. The debtor or his entity then subcontracted with Irongate. It contends it was not paid by debtor.

There is pending litigation in state court. Given that the claims and counter-claims are all based on state law, given the number of parties and related claims, and given the pendency of state court litigation, the court abstains pursuant to 28 U.S.C. § 1334(c)(1) so that the liability of the debtor can be determined.

28. 03-31293-A-13L DON GILBERT
WSS #2

HEARING - OBJECTION TO CLAIM OF MARCHBROOK BUILDING CO.
3-24-04 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled and the court abstains so that the debtor's liability to the creditor can be determined in the pending state court litigation.

The proof of claim is prima facie evidence of the validity of the claim and its amount. Fed.R.Bankr.P. 3001(f). The objecting party has the burden to "produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." In re Consolidated Pioneer Mortgage, 178 B.R. 222, 225 (B.A.P. 9th Cir. 1995). The debtor has produced no evidence to support any of the assertions in the objection.

While superficially it appears the claim of Irongate and Marchbrook are similar, the most that can be said is that they are based on the same transaction. That is, Marchbrook contracted with the debtor or an entity owned by the debtor to provide electrical contracting services. The debtor or his entity then subcontracted with Irongate. It contends it was not paid by debtor.

There is pending litigation in state court. Given that the claims and counter-claims are all based on state law, given the number of parties and related claims, and given the pendency of state court litigation, the court abstains pursuant to 28 U.S.C. § 1334(c)(1) so that the liability of the debtor can be determined.

29. 01-30194-A-13L PAULINE NORIEGA
WGM #1
ALLIANCE MORTGAGE, VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
3-16-04 [94]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied. The opposition establishes that the debtor is either current or substantially current with the post-petition installment payments to the movant. There is no cause to terminate the automatic stay.

The court recognizes that there may be a minor default caused by, if it believes the debtor, the failure of the movant to send payment coupons and to promptly credit payments or, if the court believes the movant, the failure of the debtor to timely tender payments. The court does not resolve the issue. It concludes only that with the tender of the two previously unnegotiated payments, any default is too minor to warrant termination of the automatic stay.

No fees and costs are awarded.

30. 04-22295-A-13L JULIE FRATTINI
MB #1

HEARING - OBJECTIONS TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION THEREOF BY COUNTRYWIDE HOME LOANS, INC.
4-8-04 [9]

- ☒ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The objection to the length of the plan and to the period over which the default on the objecting creditor's secured claim will be cured will be overruled. The plan's length is 36 months. All of the plan payments, less trustee's compensation, debtor's attorney's compensation, and the ongoing mortgage payment to the objecting creditor, will go to the objecting creditor. The debtor's income and monthly expenses do not permit payment over a shorter period.

The objection that the plan under-estimates the arrears owed on each claim will be overruled. The fact that the plan under-estimates the pre-petition arrears owed to the objecting creditor is not a basis for contending that the plan violates 11 U.S.C. §§ 1322(b)(2) & 1325(a)(5)(B) because the secured claim will not be paid in full. The plan provides: "*A timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan . . . The proof of claim, not the plan or the schedules, shall determine the amount and classification of a claim. If a claim is provided for by this plan and a proof of claim is filed, dividends shall be paid based upon the proof of claim unless the granting of a valuation*

or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim." The claim will be paid in full as required by section 1325(a)(5)(B) and the claim is not being modified as prohibited by section 1322(b)(2).

While the size of the claim may impact the ability of the debtor to complete the plan within the proposed term, the court need not take this issue up at this time. First, there is no evidence that the plan will not be completed within its stated term. This will depend on the amount of the other claims which have not yet been filed. Second, the plan states: " *If necessary to complete this plan, the term shall be extended up to 6 months, but the plan may not exceed 60 months in length.*" Third, if the plan cannot be completed within its stated term, plus an additional 6 months not to exceed 60 months, the case will be dismissed unless the plan is promptly amended. The inability of the plan to be completed within its term is cause for dismissal.

The objection that the plan does not pay interest on the pre-petition arrears as required by Rake v. Wade is puzzling since the plan actually requires the debtor to pay slightly more interest than the contract rate on the pre-petition arrears. This objection will be overruled.

31. 02-25997-A-13L CLINTON/SUSAN WELLS — HEARING - MOTION TO VALUE COLLATERAL OF NCO FINANCIAL 4-9-04 [56]
JRH #6

☐ Telephone Appearance
☒ Trustee Agrees with Ruling

Tentative Ruling: The motion purports to be a valuation motion. However, the motion does not seek to value the collateral of the creditor. It asserts that because the claim is owed by Susan Wells and was incurred by her prior to marriage to Clinton Wells, Clinton Wells has no liability for it and it cannot encumber property he acquired prior to the marriage or that is his separate property. While the court agrees with this assertion, it cannot grant a valuation motion because it is not being asked to value collateral. It is being asked to disallow a claim.

The court will treat the valuation motion as a claim objection. However, because less than 44 days' notice was given, it must permit the claimant to appear at the hearing to oppose the objection.

Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(d)(1) (effective Dec. 23, 2002), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(d)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

Matters called beginning at 10:30 a.m.

32. 01-33815-A-13L LINDA CALDWELL-BAZEMORE — HEARING - APPLICATION RE: FEES AND EXPENSES IN CHAPTER 13 CASE ($1,449.00) 4-19-04 [66]
FF #5

☐ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the debtor's attorney, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

33. 04-23931-A-13L SUNNY SAHOTA — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC 4-29-04 [28] O.S.T.
HAW #10
BART VOLEN, VS.

☐ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further or the exigencies of the case require the matter to be resolved immediately. If no opposition is offered at the hearing, the court will take up the merits of the motion.

34. 04-23931-A-13L SUNNY SAHOTA — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-26-04 [10]
HAW #2
BART VOLEN, VS.

☐ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

35. 04-22660-A-13L JAMAL FARACH
JLS #1
GREG VELASQUEZ, ET AL., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-27-04 [15]

☐ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

36. 03-30275-A-13L STEPHEN/CARLENE MILLER
DGN #1
FORD MOTOR CREDIT COMPANY, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-27-04 [19]

☐ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

37. 02-33882-A-13L FREDERICO DOMONDON
EE #1
BENEFICIAL CALIFORNIA INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-27-04 [41]

☒ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

38. 01-24890-A-13L RITA LUGO
CRR #1

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
4-20-04 [58]

☒ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2).

Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

39. 04-22992-A-13L TIMOTHY/CYNTHIA STAPP — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
SW #1
GMAC, VS. — 4-23-04 [14]

☒ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

THE FINAL RULINGS BEGIN HERE

40. 02-25100-A-13L RONILO/SENIN RAPATALO — HEARING - MOTION TO CONFIRM FIRST MODIFIED CHAPTER 13 PLAN 4-5-04 [54]
DJC #1

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

41. 02-20701-A-13L MARTIN/PATRICIA SPLINTER — CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 3-23-04 [75]
JY #1
BANK ONE, VS.

Final Ruling: The motion will be dismissed without prejudice at the request of the movant.

42. 04-20002-A-13L AUSTIN/LAURINA CHADWELL — HEARING - DEBTORS' OBJECTION TO CLAIM OF LONG BEACH MORTGAGE CO. 3-16-04 [21]
FF #1

Final Ruling: This objection to the proof of claim of Long Beach Mortgage Company has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The proof of claim includes in the figure for the pre-petition arrearage the February 2004 installment. This was an installment that fell due after the filing of the petition. This portion of the proof of claim is disallowed.

The objection to the late charges included in the pre-petition arrearage is also disallowed. There is nothing in the proof of claim to indicate when these charges accrued or when the debtor's payments were received. The creditor has not come forward with any such information in response to the objection.

The proof of claim is prima facie evidence of the validity of the claim and its amount. Fed.R.Bankr.P. 3001(f). The objecting party has the burden to "produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." In re Consolidated Pioneer Mortgage, 178 B.R. 222, 225 (B.A.P. 9th Cir. 1995). The debtor has carried this burden but the claimant has not come forward with any additional evidence as to the late charges.

Because the claimant cannot rely on this presumption of validity, the claimant "has the burden of proving the reasonableness of its fee claim. . . ." Atwood v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R. 227 (B.A.P. 9th Cir. 2003). "The requirement of reasonableness requires some evidence on that question once debtors objected, pointing out the missing essential element. [Citation omitted.] As [the claimant] had the affirmative burden of showing reasonableness as a matter of law, the objection, as here, need only note the absence of any such showing, and does not require evidence of support. [Citation omitted.] In effect, the omission of the proof of claim to address an essential element of the substantive claim deprives [the claimant] of the favorable Rule 3001(f) evidentiary presumption regarding validity and amount. [Citation omitted.]"

43. 04-20002-A-13L AUSTIN/LAURINA CHADWELL — HEARING - DEBTORS' OBJECTION TO CLAIM OF MARSHALL MEDICAL CENTER 3-16-04 [30]
FF #2

Final Ruling: This objection to the proof of claim of Marshall Medical Center has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. Consequently, the claim will be allowed as a general unsecured claim. The claim is based on the pre-petition medical services. Such claims are not entitled to priority status. 11 U.S.C. § 507.

44. 04-22802-A-13L KENNETH SHELTON — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 4-23-04 [15]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The case shall remain pending and the order to show cause will be discharged. The remainder of the installment filing fee has been paid in full.

45. 02-31703-A-13L PATRICIA JONES — HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 3-26-04 [63]
PGM #5

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a),

and 1329.

46. 00-31404-A-13L DONALD ROUSE — HEARING - SIXTH INTERIM APPLICATION FOR ATTORNEYS' FEES OF SCOTT A. COBEN & ASSOCIATES ($1,599.72 FEES; $272.78 EXP.) 3-30-04 [176]
SAC #10

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

47. 02-29604-A-13L VERL GILDER — CONT. STATUS CONFERENCE 11-4-02 [1]
02-2525
VERL GILDER, VS.
PEELE FINANCIAL CORP., ET AL.

Final Ruling: Given that the court has granted the motion to dismiss the adversary proceeding, the status conference is concluded.

48. 02-29604-A-13L VERL GILDER — CONT. HEARING - MOTION TO DISMISS ADVERSARY PROCEEDING FOR LACK OF PROSECUTION AND THE DEATH OF THE PLAINTIFF 2-10-04 [29]
02-2525 BHS #1
VERL GILDER, VS.
PEELE FINANCIAL CORP., ET AL.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The debtor and plaintiff died after the petition and the adversary proceeding was filed. This motion concerns only the adversary proceeding.

This motion was filed and served on counsel of record for the debtor more than 90 days ago. No motion has been made to substitute another person or representative for the plaintiff. No opposition has been filed to this motion. Therefore, the adversary proceeding must be dismissed pursuant to Fed.R.Civ.P. 25(a)(1) as incorporated by Fed.R.Bankr.P. 7004 ("Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death . . ., the action shall be dismissed as to the deceased party.").

49. 03-23705-A-13L CHRISTOPHER POMPEY, SR. HEARING - OBJECTION TO CLAIM
WW #2 OF INTERNAL REVENUE SERVICE
3-16-04 [38]

Final Ruling: This objection to the proof of claim of the IRS has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

Despite the foregoing, the objection will be dismissed without prejudice.

First, the IRS filed an amended proof of claim on March 19 which reduces its priority claim for 2002 income taxes to $1,831 plus pre-petition interest of $12.08. This corresponds with the position taken in the objection to the original proof of claim. The objection is moot.

Second, service is defective. Local Bankruptcy Rule 2002-1(c) provides:

"*Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses: 1) United States Department of Justice Civil Trial Section, Western Region, Box 683, Ben Franklin Station, Washington, D.C. 20044; 2) United States Attorney . . .; and, 3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.*"

The proof of service reveals that the Department of Justice was not served with the objection.

50. 03-25406-A-13L MARY HENRY HEARING - MOTION TO
AMH #1 APPROVE FIRST MODIFIED PLAN
3-31-04 [20]

Final Ruling: This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

51. 04-21513-A-13L ERICA ROBERTS HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
4-12-04 [22]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from

calendar for resolution without oral argument.

The objection will be sustained. Taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 66 months to complete the plan.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

52. 03-32015-A-13L ALCOUS/BRANDY ROBINSON
SPB #1

HEARING - MOTION TO APPROVE DEBTORS' FIRST AMENDED PLAN
3-25-04 [22]

Final Ruling: This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

53. 00-31516-A-13L CHARLES/BARBARA SPEARS
CRR #2

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
4-6-04 [27]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

54. 04-21416-A-13L DONALD/ESTHER ISENHART
NLE #1

HEARING - TRUSTEE'S OBJECTION TO EXEMPTIONS
4-8-04 [32]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective

Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

Fed.R.Bankr.P. 4003(a) requires that exemptions be claimed in the schedules filed pursuant to Fed.R.Bankr.P. 1007 and 11 U.S.C. § 521(1). Rule 1007 requires these schedules to be filed with the petition or within 15 days of the filing of the petitions. Fed.R.Bankr.P. 1007(c). Here, the petition was filed on February 13, 2004. The schedules, including Schedule C, were due no later than February 27. They were not filed until March 10. Because the exemptions were not timely claimed, Schedule C was of no effect. "Unless and until a debtor files a timely claim of exemptions . . . as required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, there is no 'list of property claimed exempt' for the trustee or creditors to oppose." Petit v. Fessenden, 80 F.3d 29, 33 (1st Cir. 1996). See also In re Gregoire, 210 B.R. 432 (Bankr. D. R.I. 1987).

The failure to claim timely exemptions has an impact on the analysis required by 11 U.S.C. § 1325(a)(4). Section 1325(a)(4) requires the debtor to pay to unsecured creditors no less than they would receive in a chapter 7 liquidation on the effective date of the plan. The plan defines its effective date as the date the petition was filed. If the debtor is entitled to no exemptions, and if there is property that could have been exempted, the return to unsecured creditors will obviously increase.

The objection of the trustee to all of the exemptions claimed by the debtor, over $7,800 in exemptions, will be sustained.

The debtor may file a motion seeking to retroactively extend the time for filing Schedule C and claiming the exemptions. Such a request may be made pursuant to Fed.R.Bankr.P. 9006(b)(1) and 9024. If it can be shown, for example, that the failure to timely claim exemptions was due to excusable neglect, the court may permit the debtor to claim the late claimed exemptions.

55. 04-21416-A-13L DONALD/ESTHER ISENHART — HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 4-8-04 [29]
NLE #2

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

Fed.R.Bankr.P. 4003(a) requires that exemptions be claimed in the schedules filed pursuant to Fed.R.Bankr.P. 1007 and 11 U.S.C. § 521(1). Rule 1007 requires these schedules to be filed with the petition or within 15 days of the filing of the petitions. Fed.R.Bankr.P. 1007(c). Here, the petition was filed on February 13, 2004. The schedules, including Schedule C, were due no later than February 27. They were not filed until March 10. Because the exemptions were not timely claimed, Schedule C was of no effect. "Unless and until a

debtor files a timely claim of exemptions . . . as required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, there is no 'list of property claimed exempt' for the trustee or creditors to oppose." Petit v. Fessenden, 80 F.3d 29, 33 (1st Cir. 1996). See also In re Gregoire, 210 B.R. 432 (Bankr. D. R.I. 1987).

The failure to claim timely exemptions has an impact on the analysis required by 11 U.S.C. § 1325(a)(4). Section 1325(a)(4) requires the debtor to pay to unsecured creditors no less than they would receive in a chapter 7 liquidation on the effective date of the plan. The plan defines its effective date as the date the petition was filed. If the debtor is entitled to no exemptions, and if there is property that could have been exempted, the return to unsecured creditors will obviously increase.

In this case, the debtor attempted without success to claim over $7,800 in exemptions. Without these exemptions, unsecured creditors would receive $7,800 in a chapter 7 case. However, the proposed plan will pay unsecured creditors nothing. This does not satisfy 11 U.S.C. § 1325(a)(4).

The debtor has two alternatives.

The debtor may file a motion seeking to retroactively extend the time for filing Schedule C and claiming the exemptions. Such a request may be made pursuant to Fed.R.Bankr.P. 9006(b)(1) and 9024. If it can be shown, for example, that the failure to timely claim exemptions was due to excusable neglect, the court may permit the debtor to claim the late claimed exemptions.

Alternatively, the debtor may move to amend the plan which pays a dividend based on the absence of any exemptions.

56. 04-21616-A-13L DANETTE/CARLOS HANSON — HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 4-8-04 [23]
NLE #1

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $11,684 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

57. 03-25720-A-13L JAMES SIMPSON
LJL #2

HEARING - TRUSTEE'S OBJECTION TO CLAIM OF BIORN CORPORATION FOR ACTION CARD/ CALIFORNIA FUNDING
3-17-04 [49]

Final Ruling: This objection to the proof of claim of Biron Corporation on behalf of Action Card/California Funding has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was September 24, 2004. The proof of claim was filed on February 6, 2004. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

58. 01-33625-A-13L JEROME/JULIE JOHNSON
PL #7

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
4-15-04 [68]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

59. 01-34025-A-13L JEROME/REBECCA LOK
TJS #1
FEDERAL NATIONAL MTG. ASSOC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-12-04 [45]

Final Ruling: The motion will be dismissed without prejudice.

The movant has voluntarily dismissed the motion. Because a response to the motion was filed, the court permits the dismissal on condition that all fees and costs incurred by the movant in connection with the motion are disallowed.

Counsel for the debtor shall lodge an appropriate order.

60. 02-33426-A-13L ANTHONY/TAMI OZBELENT — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW #2 — 4-15-04 [67]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied. The plan requires the debtor to make post-petition installment payments directly to the movant. The debtor failed to pay timely three monthly payments. The debtor, however, has cured the default alleged in the motion. The movant did not file a reply disputing the evidence in the opposition. Therefore, the court concludes that there is no cause to terminate the automatic stay.

Because the debtor was in default under the terms of the plan when the motion was filed, because the loan documentation contains an attorney's fee provision, and because the movant is an over-secured creditor, fees and costs of $750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served on the trustee.

61. 04-22026-A-13L DENZIL/KIMBERLEY KATHMAN — HEARING - MOTION TO VALUE COLLATERAL OF FIRE THRIFT CO.
JSO #1 — 3-18-04 [10]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) will be granted. The respondent's collateral had a value of $6,240 on the date the petition was filed. That date is the effective date of the plan. $6,240 of its claim is an allowed secured claim. When paid $6,240 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

62. 04-22026-A-13L DENZIL/KIMBERLEY KATHMAN — HEARING - MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL C.U.
JSO #2 — 3-18-04 [6]

Final Ruling: The parties have resolved this matter by stipulation.

63. 03-25328-A-13L EUGENE/RITA MOYE — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL AND/OR IMPOSITION OF SANCTIONS
4-20-04 [31]

Final Ruling: The case shall remain pending and the order to show cause will be discharged. The debtor filed an amended master address list. The $26

filing fee required by 28 U.S.C. § 1930(b) was not tendered with the amendment. After the issuance of the order to show cause, however, the fee was paid.

64. 03-25328-A-13L EUGENE/RITA MOYE
JLB #2

HEARING - MOTION TO MODIFY AND CONFIRM FIRST AMENDED CHAPTER 13 PLAN AFTER CONFIRMATION
3-31-04 [24]

Final Ruling: The motion will be dismissed without prejudice.

First, the notice of the hearing indicates that the hearing will be on May 11, 2003.

Second, the motion and proposed plan were not served on the United States Trustee as required by Fed.R.Bankr.P. 2002(b) & (k), 3015(b), 9034, as well as the United States Trustee Guidelines for Region 17, § 1.1.

Third, the proof of service does not indicate that the proposed plan was served. Since the motion does not adequately summarize all plan terms, this makes notice and service defective. See Fed.R.Bankr.P. 3015(d) & (g).

65. 03-23529-A-13L KENNETH/MARJORIE HENDRIX
SDB #1

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
3-25-04 [25]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

66. 03-24429-A-13L JEFFREY KADUK
JAT #2

HEARING - DEBTORS' OBJECTION TO SECURED STATUS TO CLAIM OF NATIONSBANK, SOVRAN BANK
3-17-04 [27]

Final Ruling: This objection to the proof of claim of Nationsbank has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The claimant obtained a judgment against the debtor before the petition was filed. The proof of claim indicates that the judgment is secured by real property owned by the debtor. However, the proof of claim contains no information or documentation demonstrating that the judgment is secured by a judicial lien such as a recorded abstract of judgment.

The proof of claim does include a copy of an order for examination served on the debtor on November 5, 2002. Pursuant to Cal. Civ. Proc. Code § 708.110 provides that service of such an order creates a lien good for one year from the date of the order. However, the lien encumbers only personal property. Thus, there are two problems with the application of section 708.110 to this case. First, the order is over one year old. Second, the claimant asserts a lien on real property but section 708.110 creates a lien on personal property only.

The claim is allowed as a general unsecured claim and disallowed as a secured claim.

67. 03-20132-A-13L JAMES/SABRA THOMAS — HEARING - MOTION TO CONFIRM FIRST AMENDED PLAN 3-26-04 [20]
JLK #1

Final Ruling: This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

68. 01-26539-A-13L DAVID/PATRICIA WILLMOTT — HEARING - MOTION TO TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 4-2-04 [13]
EJH #2

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

69. 02-29539-A-13L DOROTHY RAMON — HEARING - MOTION FOR HARDSHIP DISCHARGE 4-6-04 [74]
WW #5

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to

the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted.

11 U.S.C. § 1328(b) permits the entry of a discharge "at any time after confirmation of the plan" but before its complete consummation if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

It appears from the evidence that the debtor has lingering medical problems that have limited his ability to work. This is a circumstance "for which the debtor should not justly be held accountable". In the words of one commentator, "*Hardship discharge under § 1328(b) is reserved for the truly worst of the awfuls – something more than just the temporary loss of a job or temporary physical disability. . . Changes in financial condition that are less than total collapse are material for modification after confirmation but support a hardship discharge only if the debtor is unable to fund any modified plan.*" Lundin, 3 Chapter 13 Bankruptcy, § 9.20, p. 9-45 (2d ed. 1994). In Judge Lundin's latest treatise he states: "*If the 'not justly . . . held accountable' standard means anything, then bankruptcy courts must reserve hardship discharge for circumstances exceeding the normal or ordinary range of mishaps that befall Chapter 13 debtors . . . Circumstances indicative of true hardship are permanent in nature. . . .*" Lundin, 4 Chapter 13 Bankruptcy, § 353.1, p. 353.1-3 (3rd ed. 2000).

In a chapter 7 case, unsecured creditors would not receive a dividend greater than already paid in this case. The court also notes that because the debtor sold her home, unsecured creditors have already received what the plan promised them.

Consistent with 11 U.S.C. § 1328(c), the order granting the motion shall provide that all creditors will have 30 days, plus three days for mailing, from the service of the order to object to the dischargeability of debts pursuant to 11 U.S.C. § 523(a)(2), (4), (6), & (15) and (c). Any discharge shall be subject to any timely complaint filed and shall not include long-term debt classified in Class 1.

70. 03-21139-A-13L MELVIN/VICTORIA WILLIAMS
JLK #1

HEARING - MOTION TO RECONSIDER AND VACATE FINAL RULING OF APRIL 27, 2004 DISMISSING DEBTORS' MOTION TO CONFIRM FIRST AMENDED PLAN AND CONFIRM DEBTORS' FIRST AMENDED PLAN
4-27-04 [37]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted pursuant to Fed.R.Bankr.P. 9024 and Fed.R.Civ.P. 60(a). The court incorrectly concluded that it had not previously confirmed a

plan. Based on this error, the court concluded that the debtor's motion to confirm a modified plan gave 34 rather 39 days' notice as required by Fed.R.Bankr.P. 2002(b). Because a plan had previously been confirmed, Fed.R.Bankr.P. 3015(g) applied and it required only 34 days of notice.

The motion to confirm the modified plan also will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel should note that this error might have been avoided if the original had been captioned as a motion to modify rather than a motion to amend. In common usage, a plan is "amended" if a plan has not previously been confirmed. If it is being "modified," there is a confirmed plan.

71. 03-27639-A-13L DON/NILDA ROYSE
LHG #4

HEARING - DEBTORS' OBJECTION TO PROOF OF CLAIM OF FIRESIDE THRIFT
3-17-04 [54]

Final Ruling: The objection will be dismissed without prejudice.

First, Local Bankruptcy Rule 3007-1(b) (effective December 23, 2002) requires that a complete copy of the proof of claim be appended to the objection. The proof of claim was not introduced in connection with the objection.

Second, the notice of the hearing gives two different dates for the hearing. It indicates that the hearing will be on both April 27 and May 11. The notice is deficient for this reason.

Third, the objection was served by sending it to the address on the proof of claim but not directed "to the attention of an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process." Fed.R.Bankr.P. 7004(b)(3). A claim objection, unless joined with a demand for relief of a kind specified in Fed.R.Bankr.P. 7001, is a contested matter. Fed.R.Bankr.P. 3007, 9013, and 9014. Contested matters are initiated by filing a motion. Fed.R.Bankr.P. 9013. A motion in a contested matter must be served like a summons and a complaint. Fed.R.Bankr.P. 9014 incorporating by reference Fed.R.Bankr.P. 7004. Rule 7004(b)(3) permits service by mail on a corporation provided it is addressed to "an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process." The proof of service indicates that the objection in this instance was not mailed to the attention of "an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process."

This issue is discussed in detail in In re Rushton, 285 B.R. 76, 79-81 (Bankr. S.D. Ga. 2002). In Rushton the bankruptcy court concluded that an objection to a corporate creditor's claim could be sent to the address on the proof of claim but the failure to mail the objection to the attention of an agent or officer renders the objection procedurally defective. "Bankruptcy Rule 2003 does not apply to service of an objection to claim. . . . The request for notices [filed by the claimant's attorney] entitles [the claimant's attorney] to receive Rule 2002 notices; but it does not designate the attorney to receive service of process in a contested matter on [the claimant's] behalf. . . . The procedure for a claim objection is governed by Bankruptcy Rule 3007. . . . [A]n objection to a claim is a contested matter subject to Bankruptcy Rule 7004. . . . An objection to a proof of claim of a corporate claimant under Bankruptcy Rule 7004(b)(3) may be sent to the address of the proof of claim. When perfecting

service under Bankruptcy Rule 7004(b)(3), plaintiffs may rely on the address listed on a creditor's proof of claim. . . . [t]he Debtors were correct in mailing the objection and the notice of objection to [the claimant's] address as listed in the proof of claim. However, Debtors failed to address the objection to an officer or agent and therefore did not properly perfect service. While Debtors are not required to mail service to a named individual officer or agent, at a bare minimum service must be addressed 'to the attention of an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process.'"

Service in this case was deficient because the objection was not served "to the attention of an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process." Cf. ECMC v. Repp (In re Repp), ___ B.R. ___, 2004 DAR 4443 (BAP 9th Cir. 2004) (service in accordance with Fed.R.Bankr.P. 2002(b) does not satisfy the service requirements of Fed.R.Bankr.P. 7004(b)).

72. 03-33740-A-13L LA DONNA NEWTON — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 4-15-04 [33]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The case shall remain pending and the order to show cause will be discharged. The remainder of the installment filing fee has been paid in full.

73. 02-20847-A-13L JLK #1 MICHAEL BOSCH AND MARICON ESTRADA — HEARING - MOTION TO CONFIRM FIRST AMENDED PLAN 3-25-04 [44]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

74. 02-27947-A-13L MWB #3 KELLY/NOLA ETTLEMAN — HEARING - SECOND MOTION FOR APPROVAL OF ATTORNEYS FEES AND COSTS PAYABLE ($1,813.50) 4-6-04 [60]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46

F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

75. 04-20249-A-13L NORMA/JOHN CRANSHAW — HEARING - OBJECTION TO CLAIM OF CITY OF SACRAMENTO 3-23-04 [25]
FF #2

Final Ruling: This objection to the proof of claim of City of Sacramento has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The claim was discharged in a chapter 7 case filed by the debtor. The claimant's claim was scheduled in the prior case and it received notice of the bar date for claims. It filed a claim. That claim was discharged in the prior case. No judgment was entered excepting it from discharge. Therefore, the claim was discharged in the prior case and it is disallowed in this case.

76. 01-32850-A-13L MATTHEW WEHNER — HEARING - APPLICATION RE: ADDITIONAL FEES AND EXPENSES IN CHAPTER 13 ($1,400.00) 3-31-04 [64]
MET #3

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

77. 03-29950-A-13L KONSTANTINE BRUTSKIY — HEARING - FIRST INTERIM APPLICATION FOR ATTORNEYS' FEES OF SCOTT A. COBEN & ASSOCIATES ($1,543.77) 3-30-04 [17]
SAC #2

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23,

2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

78. 04-20352-A-13L DANIEL/ROSE DEMAREST — HEARING - OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND REQUEST FOR DISMISSAL BY WASHINGTON MUTUAL HOME LOANS, INC. 3-24-04 [14]
SML #1

Final Ruling: The objection will be dismissed without prejudice.

The debtor dismissed the petition on April 28, 2004. Therefore, the objection is moot.

79. 00-29953-A-13L JAMES/TAMMY BRUSCINO — HEARING - MOTION TO AVOID LIEN 3-19-04 [115]
JLB #6
VS. NO. CALIFORNIA COLLECTION SERVICE, INC.

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $200,000 as of the date of the petition. The unavoidable liens total $174,000. The debtor has an available exemption of $75,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

80. 00-29953-A-13L JAMES/TAMMY BRUSCINO. — HEARING - MOTION TO AVOID LIEN 3-19-04 [119]
JLB #7
VS. DAVE'S RENT-A-CAR

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The

defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $200,000 as of the date of the petition. The unavoidable liens total $174,000. The debtor has an available exemption of $75,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

81. 03-28558-A-13L ROBERT/PATRICIA TAYLOR
MET #2

HEARING - APPLICATION RE ADDITIONAL FEES AND EXPENSES IN CHAPTER 13 ($1,700.00)
3-31-04 [92]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

82. 04-21361-A-13L STEPHANIE MAHER

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
4-16-04 [64]

Final Ruling: The order to show cause will be discharged as moot because the case was dismissed on May 6, 2004 on the trustee's motion.

83. 04-21361-A-13L STEPHANIE MAHER
TJS #1
FEDERAL NATIONAL MORTGAGE ASSN., VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-04 [12]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on May 6, 2004 on the trustee's motion.

84. 04-21361-A-13L STEPHANIE MAHER
TJS #2

HEARING - OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN BY FEDERAL NATIONAL MTG. SVCS.
4-7-04 [56]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on May 6, 2004 on the trustee's motion.

85. 04-21962-A-13L GABI/ANDA PAVAL
WAJ #1
MARIOARA BUCURENCIU, VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-04 [6]

Final Ruling: This motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). The court continued the hearing to April 27, 2004. However, the court removed the matter from calendar on the assumption that the petition had been dismissed. It has not been dismissed. The matter is properly restored to calendar for resolution.

Since the debtor did not file opposition by April 20 as previously ordered, it appears that the debtor has no opposition to the motion. Therefore, the motion will be resolved without oral argument.

The movant leased or rented residential real property to the debtor. Prior to the filing of the petition, the movant served a three-day notice to pay or quit on the debtor. The debtor neither paid nor quit.

Given the service and expiration of the three-day notice, the debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The stay is modified to permit the movant to seek possession of the property. No fees and costs are awarded. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

86. 01-28563-A-13L ROSE DIGHERO
MET #5
VS. FIRESIDE THRIFT CO.

HEARING - MOTION TO AVOID LIEN
4-8-04 [56]

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $220,000 as of the date of the petition. The unavoidable liens total $148,312. The debtor has an available exemption of $71,688. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

87. 02-20265-A-13L VIVIEN JOHNSON
MPD #1
BANK OF AMERICA N.T.&S.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-14-04 [106]

Final Ruling: The court finds that a hearing will not be helpful to its

consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied. The plan requires the debtor to make post-petition installment payments directly to the movant. The debtor failed to pay timely three monthly payments. The debtor, however, has cured the default alleged in the motion. The movant did not file a reply disputing the evidence in the opposition. Therefore, the court concludes that there is no cause to terminate the automatic stay.

Two notes. First, the court has not taken into consideration the inspection fees alleged to be due when concluding that the post-petition default has been cured. In the absence of evidence that the contract permits the assessment of such charges, and that each inspection was necessary and actually conducted, the court will not terminate the stay based on this alleged default.

Because the debtor was in default under the terms of the plan when the motion was filed, because the loan documentation contains an attorney's fee provision, and because the movant is an over-secured creditor, fees and costs of $750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served on the trustee.

88. 00-30367-A-13L SANDRA WHITEMON
SDB #1

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
3-24-04 [35]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

89. 01-30367-A-13L LARRY/EDNA SETTLES
SDB #7

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
3-23-04 [71]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed.

The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

90. 02-33768-A-13L CHARLES JOHNSON — HEARING - DEBTORS' MOTION TO MODIFY PLAN
CLH #2 — 3-30-04 [47]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

91. 04-20270-A-13L MELANIE HUGHES — HEARING - MOTION TO QUASH SUBPOENA
MLH #1 — 4-8-04 [40]

Final Ruling: The parties have continued the hearing on this matter to May 25, 2004.

92. 03-31171-A-13L DANE BOHRER — HEARING - MOTION TO EMPLOY SPECIAL COUNSEL
PA #2 — 4-13-04 [56]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied because it is unnecessary. Nothing in 11 U.S.C. § 327 requires a chapter 13 debtor to obtain prior approval for the employment of an attorney. Section 327 applies only to a trustee. A chapter 13 debtor does not have the status of a trustee.

Although the court need not approve counsel's employment, counsel's fees are subject to court approval. See 11 U.S.C. §§ 329, 330(a)(4)(B).

93. 04-21472-A-13L RICHARD/PHYLLIS CARPINO — HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
NLE #1 — 4-8-04 [12]

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $17,822 in a chapter 7 liquidation as of the effective

date of the plan. This plan will pay only $2,707.04 to unsecured creditors.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

94. 03-33974-A-13L DAVID/DENISE STEWART — HEARING - MOTION TO CONFIRM DEBTORS' FIRST AMENDED PLAN
PGM #1 — 3-26-04 [39]

Final Ruling: This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

95. 04-20174-A-13L SIDNEY/HELEN SUNBURY — HEARING - DEBTORS' MOTION FOR CONFIRMATION OF FIRST AMENDED CHAPTER 13 PLAN
CJY #1 — 3-24-04 [19]

Final Ruling: This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

96. 03-20775-A-13L JESSE/KELLY LOWE — HEARING - MOTION FOR ADDITIONAL ATTORNEY FEES ($1,520.00)
CRR #2 — 4-2-04 [47]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

97. 02-25276-A-13L RANDALL POWELL
MPD #2
SKYLINE FUNDING, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-13-04 [45]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan, which identifies the movant as Option One, requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay seven monthly post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

98. 04-20983-A-13L VINCE FLETCHER
NLE #1

HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
4-8-04 [25]

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling at least $7,404.16. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 112 months to complete the plan.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

99. 04-20983-A-13L VINCE FLETCHER
LLV #1

HEARING - FIRST AMENDED OBJECTION TO CONFIRMATION OF DEBTOR'S AMENDED CHAPTER 13 PLAN BY WOLFGANG SPIEGELSTEIN ET AL
4-13-04 [28]

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained in part. As the court has ruled in connection with the trustee's objection (DCN NLE-1), the plan is not feasible and confirmation will be denied on that basis.

To the extent that the objecting creditor "requires" language be inserted in Section IV of the plan to make clear that it is not required to start a new foreclosure if the plan is confirmed, the court rejects any such requirement. There is nothing in the plan stating that its confirmation compels a secured creditor to begin its foreclosure anew in the event of a post-petition default and termination of the automatic stay. Further, Peters v. Mason-McDuffie Mortgage Corp. (In re Peters), 101 F.3d 618 (9th Cir. 1996), addresses the issue. There is no cure of a default by the mere confirmation of the plan. The plan must be consummated. Pending consummation, any existing nonjudicial foreclosure may be postponed. It is unnecessary for the plan to make any provision on the topic.

100. 99-35385-A-13L ANDRE/KARLA WYNNE
WW #7

HEARING - MOTION TO CONFIRM THIRD MODIFIED CHAPTER 13 PLAN
4-6-04 [91]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and

the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

101. 01-20490-A-13L JOE/LOTTIE AMMON
MWB #7
PROFESSIONAL CREDIT MGMT.

HEARING - MOTION TO AVOID JUDGMENT LIEN ON PROPERTY OF THE ESTATE
4-6-04 [97]

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $15,000 as of the date of the petition. While there are no unavoidable liens, the debtor has an available exemption of $15,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

102. 02-28690-A-13L RICHARD/LINDA STROM
SAC #6

HEARING - FIRST INTERIM APPLICATION FOR ATTORNEYS FEES OF SCOTT A. COBEN & ASSOCIATES ($1,282.31)
3-31-04 [58]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

103. 03-21991-A-13L DANIEL GROVE
LJL #1

HEARING - TRUSTEE'S OBJECTION TO CLAIM OF LANDMARK NATIONAL CORPORATION
3-17-04 [56]

Final Ruling: This objection to the proof of claim of Landmark National

Corporation has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was July 2, 2003. The proof of claim was filed on February 13, 2004. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

104. 03-28691-A-13L JACQUE CARTIER — HEARING - TRUSTEE'S OBJECTION TO CLAIM OF WEINSTEIN, TREIGER & RILEY FOR B-FIRST
LJL #1 — 3-17-04 [27]

Final Ruling: This objection to the proof of claim of Weinstein, Treiger & Riley has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c).

In this case, the documentation is not appended to the claim. Appended to the claim is a signed statement indicating that the documentation has been lost and attaching a specimen of the security documentation. However, there is nothing in or appended to the claim identifying the property subject to the claimant's security interest. Consequently, it cannot be determined if the debtor has that property nor can the property be valued.

When these requirements for a proof of claim are satisfied, the proof of claim is entitled to be deemed prima facie evidence of the validity and amount of the claim. Fed.R.Bankr.P. 3001(f). Given that the proof of claim does not identify the collateral for the claim, it is not entitled to be treated as prima facie valid secured claim. It is allowed as a general unsecured claim and disallowed as a secured claim.

105. 02-34194-A-13L MARGARET ARBUCKLE — HEARING - MOTION FOR ATTORNEY FEES ($1,520.00)
CRR #5 — 4-2-04 [73]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

106. 02-25997-A-13L CLINTON/SUSAN WELLS — HEARING - MOTION TO MODIFY CONFIRMED PLAN 3-26-04 [52]
JRH #4

Final Ruling: The motion will be dismissed without prejudice.

First, the proof of service indicates that no creditors were served with the motion as required by Fed.R.Bankr.P. 2002(b) and 3015(g).

Second, the proof of service does not indicate that the proposed plan was served. Since the motion does not adequately summarize all plan terms, this makes notice and service defective. See Fed.R.Bankr.P. 3015(d) & (g).

107. 03-27597-A-13L JOSE/ISABELLE ORTEGA — HEARING - TRUSTEE'S OBJECTION TO CLAIM BY CARD PROCESSING CENTER 3-17-04 [50]
LJL #2

Final Ruling: This objection to the proof of claim of Card Processing Center has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was November 5, 2003. The proof of claim was filed on November 10, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).